147 U. S. 691

RECORD, CASE NO. 14194.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 459.

THE UNITED STATES, APPELLANT,

vs.

ALMON HALL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED OCTOBER 1, 1890.

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1 Be it remembered that heretofore, to wit, on the 27th day of May, A. D. 1890, there was filed in the district court of the United States for the northern district of Ohio, a petition which is in the words and figures following, to wit:

United States district court in and for the northern district of Ohio, western division.

ALMON HALL, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } Petition.

Plaintiff is, and for more than ten years last past has been, a commissioner of the United States circuit court in and for said district.

Between August 13, 1886, and December 31, 1889, there was commenced and heard before plaintiff, as such commissioner, prosecutions by the United States against the several persons named in the schedule hereto annexed, marked A and made part hereof, for the offences set forth in said schedule, and at the dates therein stated. By reason of the premises plaintiff became entitled, under the statutes of the United States, to receive from the United States, in each of said cases, for making the dockets and indices, the fees set forth in said schedule, amounting, in the aggregate, to the sum of three hundred and eleven dollars.

During the 3d and 4th quarters of 1888 and the year 1889 plaintiff, as commissioner as aforesaid, took and certified one hundred and three acknowledgments of sureties on recognizances of defendants in prose-
2 cutions brought by the United States, for each of which acknowledgments plaintiff was entitled by the statutes of the United States to receive the sum of twenty-five cents, amounting in the aggregate to $25.75.

At the December, 1889, term of this court, held at Toledo, in the western division of said district, plaintiff's itemized account for services as commissioner, as aforesaid, duly verified according to law, and containing, among other items, the items of docket fees and fees for taking acknowledgements above referred to was presented to this court, and was by this court duly examined and duly and in due form of law approved. Said accounts, with a duly certified copy of the order of this court approving said account, was duly filed with the First Auditor of the Treasury, and was by him audited and transmitted to the First Comptroller of the Treasury for his decision thereon. Said Comptroller thereupon disallowed all of said items of docket fees as "not authorized by law," and disallowed said items of fees for taking acknowledgments in the words following, to wit: "The fee allowed by law for taking acknowledgement of a recognizance is 25 cents, regardless of the number of persons so recognized, as the act of the several parties should be a joint one. All in excess of this is disallowed."

Said items of account are correct, just, due, and unpaid, and are for services actually and necessarily rendered.

By reason of the premises an action has accrued to plaintiff, and there is due to this plaintiff from the defendant the sum of $336.75, for which plaintiff prays judgment under the provisions of the statute in such case made and provided.

ALMON HALL, *In Pro. Per.*

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I am plaintiff above named. I have read the foregoing petition and know the contents thereof. The facts therein stated are true.

ALMON HALL.

3 Signed in my presence and sworn to before me this 26th day of May, 1890.

HALLIE W. BROWN,
U. S. Commissioner.

4 SCHEDULE A.

Name of defendants.	Offence.	Date of final disposition.	Amt. of docket fee. Issue joined; evidence heard.	Issue joined; no evidence.	Disposed of without issue.
		1886.			
Peter Ackerman	Violation pension laws	Aug. 14			$1.00
John S. Hagerman	Passing counterfeit money	" 21	$3.00		
Rule Sawyer	Passing counterfeit money	" 25	3.00		
John S. Hagerman	Passing counterfeit money	" 31	3.00		
Orville G. Wales	Violation pension laws	Sep. 8	3.00		
Albert Denman	Violation postal laws	" 9	3.00		
Alex. Antic	Violation int. rev. law	" 14	3.00		
John Q. Nichols	Violation int. rev. law	" 16	3.00		
Paul Perry	Violation int. rev. law	" 18	3.00		
Jacob Nause	Violation int. rev. law	" 24			1.00
T. C. Oard	Violation int. rev. law	" 27			1.00
Benj. McMahon	Violation int. rev. law	Oct. 8	3.00		
Wm. L. Reece	Violation int. rev. law	" 12	3.00		
Michael Sweeney et al	Making counterfeit coin	" 22	3.00		
Frank Lewis	Forging postal money order	" 29			1.00
Chas. L. York	False personation U. S. mar	Nov. 1	3.00		
Wesley James	False personation U. S. Pen. Of	Nov. 16	3.00		
Lamont Elwell	Violation election law	Dec. 4			1.00
David A. Owens	Violation election law	" 8	3.00		
James A. Hubbell	Violation int. rev. law	" 6	3.00		
Harriet Gravelle	Appropriation of public money	" 7	3.00		
Angelina Earl	Violation int. rev. law	" 23	3.00		
			51.00		5.00
5 Am't brought forward			51.00		5.00
		1887.			
Simon Meyers	Violation election law	Jan. 14	3.00		
Jennie Worthington	" int. rev. law	" 8		$2.00	
Lester Cooley	" postal law	" 29			1.00
Robert H. Pierce	" int. rev. law	Feb 2	3.00		
Frank A. Dugan	" postal "	" 15	3.00		
John A. Chase	" pension "	" 22	3.00		
Shepley R. Holmes	" postal "	Apr. 7	3.00		
Edwd. F. Cody	" " "	" 15	3.00		
Albert Cogswell	" pension "	" 27	3.00		
Frank A. Dieghan	" postal "	May 10	3.00		
Albertus C. Bowen	" " "	" 24		2.00	
Arlington A. Robinson	" " "	" 25	3.00		
Nellie Brown	" int. rev. "	Jun. 17	3.00		
Frank Stanfield	" postal "	" 18	3.00		
Jos. A. Birkmier	" " "	Aug. 8		2.00	
Edward D. Palue	False personation U. S. officer	Jul. 9	3.00		
Wm. Bailey	Violation postal law	" 18	3.00		
Phil. A. Reilly	" postal law	" 5	3.00		
Sylvester West	" " "	" 12	3.00		
Wm. B. Sorden	" " "	" 23	3.00		
John F. Wilson	" int. rev. "	" 25	3.00		
Gertrude Bailey	" " " "	Sep. 10	3.00		
John D. Bickford	" " " "	" 12	3.00		
"John Doe" et al	" " " "	" 26			1.00
Benj. F. Rose	" pension "	Oct. 19	3.00		
Catharine Lawrence	" postal "	" 29	3.00		
John Nodolski	" int. rev. "	Dec. 2	3.00		
Alvin Bauer	" " " "	Nov. 28	3.00		
Frank Orwig	" " " "	" 25	3.00		
James M. Pendleton	" " " "	Dec. 6	3.00		
Chas. A. Rinehart	" postal "	" 22	3.00		

SCHEDULE A—Continued.

Name of defendants.	Offence.	Date of final disposition.	Amt. of docket fee. Issue joined; evidence heard.	Issue joined; no evidence.	Disposed of without issue.
		1888.			
John Reitzinger et al	Counterfeiting	Mch. 27	$3.00	.....	.....
Mary McBride	Violation postal laws	Jan. 26	3.00	.....	.....
Wm. F. Cooney	" " "	Feb. 2	.....	.....	$1.00
Mrs. E. N. Perce	" " "	Mch. 1	3.00	.....	.....
James Cooley	" pension "	May 23	.....	.....	1.00
Allen O. Todeley	" postal "	Apr. 25	3.00	.....	.....
Harry Huggett	" " "	May 25	.....	.....	1.00
Abraham G. Werr	" " "	Jun. 22	3.00	.....	.....
G. Kelley	" " "	May 14	3.00	.....	.....
James P. Weaver	" " "	" 19	3.00	.....	.....
Edwd. Freeman	" " "	" 23	3.00	.....	.....
Lucian A. Proctor	" " "	" 29	3.00	.....	.....
			156.00	$6.00	10.00
6 Am't brought forward			156.00	6.00	10.00
		1888.			
Geo. W. Hopkins	Violation int. rev. laws	Jul. 31	3.00	.....	.....
John Norton	" " "	Sep. 26	.....	.....	1.00
Joe Ross	" postal "	Jul. 31	.....	.....	.....
Harvey Sutton	" int. rev. "	Aug. 24	3.00	.....	.....
Hugh Dugan	" " " "	Sep. 16	.....	.....	1.60
Isthem B. Bailey	Passing counterfeit money	Aug. 17	.....	.....	1.00
Mathew Redding	Violation navigation laws	" 31	3.00	.....	.....
Jennie Snyder	Violation int. rev. laws	Sep. 7	.....	.....	1.00
Charles Albright	" pension laws	" 11	.....	.....	1.00
George F. Morgan	" postal "	Oct. 16	.....	.....	.....
James Kelley	" pension law	" 20	3.00	.....	.....
Irving Lowrey	Passing counterfeit money	" 25	3.00	.....	.....
Sophia Bade	Violating int. rev. law	Nov. 2	3.00	.....	.....
John Brewer	" " "	" 28	3.00	.....	.....
Willis Ford	Passing counterfeit money	Dec. 3	3.00	.....	.....
James Post	" " "	" 3	3.00	.....	.....
Philip Phillips et al	" " "	" 11	3.00	.....	.....
Irvine J. Reynolds	Violating postal laws	" 20	.....	.....	1.00
Clarissa A. Craig	" " "	" 20	3.00	.....	.....
Joseph Anderson	" pension "	Jan. 15	3.00	.....	.....
R. M Farland	" " "	" 19	3.00	.....	.....
F. J. Ray	" postal "	" 6	.....	2.00	.....
Harry Obermeyer	" " "	" 26	.....	.....	1.00
Henry R. Gordon	" " "	" 28	.....	.....	1.00
Kit Brown	" int. rev. "	Feb. 6	.....	.....	1.00
Sadie Brown	" " " "	" 9	3.00	.....	.....
George Harteg	" " " "	" 15	3.00	.....	.....
Oliver Kesberry	" postal "	Mch. 2	3.00	.....	.....
Michael Ziegler	" int. rev. "	" 21	.....	.....	1.00
George Saunders	" postal "	" 2	3.00	.....	.....
Perry H. Porter	Passing counterfeit money	" 4	3.00	.....	.....
Jane Davis	Violating postal laws	" 23	3.00	.....	.....
L. D. Wilges	" " "	" 25	3.00	.....	.....
John W. Jackson	" pension "	Apr. 1	.....	.....	1.00
Frank Barnes	" " "	" 1	.....	.....	1.00
Roland Ledyard	" int. rev. "	" 4	3.00	.....	.....
Thos. N. Wilcox	" election "	Mch. 30	3.00	.....	.....
Lizzie Field	" int. rev. "	Apr. 8	3.00	.....	.....
Albert Fike	" " " "	" 23	.....	.....	1.00
			225.00	8.00	24.00
7 Am't brought forward			225.00	8.00	24.00
Morris Levy	Violation int. rev. laws	Apr. 24	.....	.....	1.00
Frank X. Pfifer	" " " "	May 2	3.00	.....	.....
Blanche B. De Ardus	" postal "	" 23	3.00	.....	.....
Perry H. Porter	Passing counterfeit money	" 4	3.00	.....	.....
Bateson Harris	Violating int. rev. laws	" 3	.....	.....	1.00
James M. Fisher	" " "	Jun. 5	3.00	.....	.....
A. A. Inders	" postal "	" 12	3.00	.....	.....
A. J. Smith	" " "	" 7	3.00	.....	.....
David H. Betts	" " "	Aug. 17	3.00	.....	.....
Eugene Schomer	" int. rev. "	Jul. 12	.....	.....	1.00
Herman D. Hahn	" " "	" 9	.....	.....	1.00
Caroline Nodolski	" " "	" 26	3.00	.....	.....
Lizzie Clark	" " "	Sep. 16	3.00	.....	.....
Fred'k W. Schroeder	Passing counterfeit money	" 18	3.00	.....	.....
Charles A. Smith	Violating int. rev. laws	" 27	3.00	.....	.....
J. S. Shellanbarger	" " "	Oct. 29	.....	2.00	.....

SCHEDULE A—Continued.

Name of defendants.	Offence.	Date of final disposition.	Amt. of docket fee. Issue joined; evidence heard.	Issue joined; no evidence.	Disposed of without issue.
Edgar H. Van Hoesen	Violating U. S. banking laws	Nov. 4	$3.00		
John McKee	" U. S. banking laws	" 18			$1.00
John E. Hill	" postal laws	" 4			1.00
Edward Baedler	Counterfeiting	" 11	$3.00		
N. Lane	Violating int. rev. laws	" 14			1.00
Louis Besler	" postal "	Dec. 17	3.00		
Caroline Blank	" " " "	Sep. 9	3.00		
			270.00	$10.00	31.00
			10.00		
			31.00		
Total			311.00		

Filed May 27th, 1890.

H. F. CARLETON,
Clerk.

8 And afterwards, to wit, on the 27th day of May, 1890, an affidavit was filed in said cause, which affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Almon Hall, being duly sworn upon my oath, say: That I am the plaintiff in the case of Almon Hall against the United States pending in United States district court for the western division of said district; that on the 27th day of May, 1890, I transmitted to the Attorney-General of the United States at Washington, by registered letter, a true copy of the petition in said case, and on the same day transmitted to the United States district attorney for said district a true copy of the petition in said case; the registry receipts whereof I hereto attach.

ALMON HALL.

Signed in my presence and sworn to before me this 27th day of May, 1890.

HALLIE W. BROWN,
United States Circuit Court Commissioner in and for said district.

Registry receipt.

Registered May 27, 1890, Toledo, O.

Post-office at .

Registered { letter / parcel } No. 2458. Recd. , 18 , of Almon Hall, 58 Produce Exchange, addressed to Hon. Atty. Gen. of U. S., Washington, D. C.

GEO. E. LORENZ, *P. M.*

Registry receipt.

Registered May 27, 1890, Toledo, O.

Post-office at .

Registered { letter / parcel } No. 2457. Rec'd , 18 , of Almon Hall, 58 Produce Exchange, addressed to U. S. district atty., Toledo, O.

GEO. E. LORENZ, *P. M.* 3.

9 And afterwards, to wit, on the 10th day of June, A. D. 1890, a demurrer was filed in said cause, which demurrer is in the words and figures following, to wit:

United States district court in and for the northern district of Ohio western division.

ALMON HALL, PLAINTIFF, *vs.* THE UNITED STATES, DEFENDANT. } Demurrer to petition.

Now comes Isaac N. Alexander, United States attorney for the district and division aforesaid, and for and on behalf of the United States, demurs to the petition filed in the above-entitled cause, for that:

First. Said court has no jurisdiction to try, hear, and determine this action.

Second. For that the said petition herein filed in this cause by said plaintiff does not state facts sufficient in law to constitute a cause of action in favor of said plaintiff and against said defendant.

ISAAC N. ALEXANDER,
United States Attorney for said District aforesaid.

Filed Jun. 10, 1890. H. F. Carleton, clerk.

10 And afterwards, to wit, on the 3rd day of July, A. D. 1890, an answer was filed in said cause, which answer is in the words and figures following, to wit:

United States district court in and for the northern district of Ohio, western division.

ALMON HALL, PLAINTIFF, *vs.* THE UNITED STATES, DEFENDANT. } Answer.

Now comes Isaac N. Alexander, on behalf of the United States in the above styled action, and for answer thereto says:

That he denies each and every, all and singular, the statements and allegations set forth and contained in the petition of said plaintiff filed in this action, and demands proof thereof.

ISAAC N. ALEXANDER,
U. S. Attorney for Northern District of Ohio.

Verification waived.

ALMON HALL.

Filed Jul. 3, 1890. H. F. Carleton, clerk.

11 And afterwards, to wit, on Thursday, July 3rd, A. D. 1890, the honorable Augustus J. Ricks, district judge, presiding, an order was entered upon the journal of said court in said cause, which order is in the words and figures following, to wit:

ALMON HALL)
vs.
THE UNITED STATES.)

This day this cause came on to be heard, and was heard upon the demurrer filed by the district attorney on behalf of the United States to the petition of said plaintiff filed in this cause, and was argued by counsel and submitted to the court, and the court, being fully advised in the premises, is of the opinion that said demurrer is not well taken, and does overrule the same.

To which ruling and decision the district attorney, on behalf of the United States, at the time duly excepted and still excepts; and thereupon, by leave of court first had and obtained, the district attorney filed in said cause an answer on behalf of the United States; and thereupon, on issue joined, said cause came on further to be heard and was heard upon the evidence, pleadings, exhibits, and was argued by counsel and submitted to the court; and the court being now fully advised in the premises, does find the following as the facts in said case, to wit:

FINDING OF FACTS.

I. That said plaintiff, Almon Hall, has been continuously, for the past ten years and is now, a commissioner of the circuit court of the United States within and for the northern district of Ohio, duly appointed, commissioned, qualified, and acting as such.

II. That said commissioner actually performed the following services during the time covered by his account, set forth in his said petition, to wit: Docket fees, $311.00.

12 III. That said commissioner actually rendered the services charged for in said account set forth in said petition relating to acknowledgments taken during the 3rd and 4th quarters of the years 1888 and 1889.

IV. That said accounts itemized and duly verified as required by law, were presented to the district court of the United States for the northern district of Ohio at the December, 1889, term thereof, holden at the city of Toledo, in the western division of said district, and were by said court examined, approved, and allowed by said court.

V. That said account, so approved and allowed by said court, with a duly certified copy of the order of said court allowing the same was filed with the First Auditor of the Treasury, and was by him audited and transmitted to the First Comptroller of the Treasury.

VI. That said comptroller disallowed all of said items of docket fees, and also disallowed said items charged for taking acknowledgments.

VII. That said several amounts, charged by said commissioner, viz: Docket fees, $311; and fees for acknowledgments, $25.75, have not, neither has any part thereof been paid.

CONCLUSIONS OF LAW.

Upon the foregoing finding of facts the court decides as conclusions of law that the claimant, Almon Hall, is entitled to recover from the United States the sum of three hundred and thirty-six dollars and seventy-five cents ($336.75).

To each and all of said findings of facts, and to the conclusions of law, the district attorney on behalf of the United States at the time duly excepted. And thereupon, and on said 3rd day of July, 1890,
13 said district attorney on behalf of the United States duly filed in said case a motion for a new trial for the reasons stated and set forth in said motion, which said motion was argued by counsel and submitted to the court, upon consideration whereof the court does overrule said motion.

To which ruling and decision of the court the district attorney duly excepted.

It is therefore by the court ordered, considered, and adjudged that said plaintiff, Almon Hall, recover of and against the United States the sum of three hundred and thirty-six dollars and seventy-five cents, with interest thereon at four per centum per annum, until appropriation is made to pay the same, and his costs in and about this suit, taxed to $——.

To which judgment, order, and decision the district attorney for and on behalf of the United States duly excepted and still excepts.

14 And afterwards, to wit, on the 3rd day of July, A. D. 1890, there was filed in said cause a motion for a new trial which is in the words and figures following, to wit:

United States district court in and for the northern district of Ohio, western division.

ALMON HALL, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } Motion for new trial.

Now comes Isaac N. Alexander, United States attorney for said district, and on behalf of the United States moves the court to vacate, set aside, and hold for naught the findings of fact herein and conclusions of law thereon, and for a new trial of this action for the following reasons, to wit:

1. Because the court erred in overruling and in not sustaining the demurrer filed on behalf of the United States in this case.

2. Because the court erred in its conclusions of law upon the facts found in this case.

3. Because judgment should have been rendered in favor of said defendant and against said plaintiff according to the law of the land.

ISAAC N. ALEXANDER,
U. S. Dist. Atty.

Filed Jul. 3, 1890. H. F. Carleton, clerk.

15 And afterwards, to wit, on Wednesday, August 13th, A. D. 1890, an order was entered in said cause, which order is in the words and figures following, to wit:

ALMON HALL
vs.
THE UNITED STATES.

This day came the defendant by its attorney and prayed an appeal to the next term of the Supreme Court of the United States, which said appeal was duly allowed.

16 THE UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division:

I, H. F. Carleton, clerk of the district court of the United States within and for said district, do hereby certify the foregoing to be a true copy of all the pleadings, papers, and proceedings in the within entitled cause in said court; that I have compared the same with the original record of said pleadings and proceedings now remaining under my custody as clerk of said court, and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court at Toledo, in said district, this 12th day of September, A. D. 1890, and in the 115th year of the Independence of the United States of America.

[SEAL.] H. T. CARLETON, *Clerk.*

(Indorsement on cover:) No. 459. The United States, appellant, vs. Almon Hall. N. Ohio D. C. U. S. 14194. Filed October 1, 1890.

147 U.S. 691

Office Supreme Court U. S.
FILED.
DEC 29 1892
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
ALMON HALL, APPELLEE.
} No. 459.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
ALMON HALL, APPELLEE.
No. 459.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLANT.

This claim consists of two classes of fees only, viz, docket fees amounting to $311, and fees for taking "one hundred and three acknowledgments of sureties on recognizances of defendants in prosecutions brought by the United States," amounting to $25.75.

The First Comptroller disallowed both items "as not authorized by law."

Suit was brought for the same by the claimant in the United States district court for the northern district of Ohio, and judgment was obtained for $336.75, the aggregate sum of both items.

It is insisted that the said court erred in giving judgment for any sum, and that said judgment is contrary to law.

ARGUMENT.

In respect to the item for docket fees, it is only necessary to refer the court to the case of *Ewing* v. *United States* (140 U. S. R., 143), in which it was held that docket fees since the passage of the act of August 4, 1886, are unlawful. All the fees in this claim bear date after the passage of said act. Counsel for the appellant has abandoned this part of the claim.

The other item, for taking the acknowledgments of sureties on recognizances of defendants, is unwarranted by law.

In the Ewing Case, above cited, it was held that the taking of such an acknowledgment in a criminal case by the accused and his sureties is a single act, for which only one fee can be charged.

In *Davies' Case* (23 C. Cls. R., 468) it was held that "separate recognizances for witnesses to appear at court in the same case are not required. All may be joined in one." If separate recognizances are not required it, of course, follows that separate acknowledgments can not be.

In the *Churchill Case* (25 C. Cls. R., 1) it is distinctly held that only one fee for the acknowledgment of a defendant and his sureties is lawful.

There can be no relaxation of this rule, except where the court below finds as a fact from the evidence that the

defendant and his sureties could not be joined in a single acknowledgment, and that it was necessary to take the acknowledgments separately.

No such fact appears in this case, and there is no reason to presume that any necessity for separate acknowledgments existed.

It is incumbent upon the plaintiff, and not upon the defendants, to prove this necessity. The fact is a necessary one before the right to recover for more than one acknowledgment can accrue, and must be affirmatively proved by the plaintiff. Besides, the evidence by which to prove the fact is exclusively within the knowledge of the plaintiff, and the burden of proof, therefore, rests upon him.

For the foregoing reasons, it is submitted that the judgment of the court below should be reversed.

JAMES H. NIXON,
Assistant Attorney.

CHARLES H. ALDRICH,
Solicitor-General.

147 U.S. 691

Office Supreme Court U. S.
FILED.
DEC 15 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
ALMON HALL, APPELLEE.
No. 459.

Appeal from the District Court of the United States for the Northern District of Ohio.

BRIEF FOR APPELLEE.

CHARLES C. LANCASTER,
Counsel for Appellee.

MITCHELL PRINTER.

IN THE

Supreme Court of the United States.

October Term, 1892.

THE UNITED STATES, APPELLANT,
vs.
ALMON HALL, APPELLEE.
No. 459.

Appeal from the District Court of the United States for the Northern District of Ohio.

FEES OF COMMISSIONER.

BRIEF FOR APPELLEE.

As the claim for docket fees accrued subsequent to the act of August 4, 1886 (24 Stat., 274), it is now abandoned under the decision of this Court in U. S. *vs.* Ewing, 140 U. S., 143.

The charge for taking and certifying one hundred and three acknowledgments of sureties on recognizances of defendants in prosecutions brought by the United States, amounting to $25.75, is claimed for the reason that it is not in conflict with the ruling of this Court in the Ewing case, *supra*. There the finding of the court below was that the acknowledgments of defendant and surety were taking at the same time, and this Court held that it was a joint and single act and only one fee could be charged. There is no such finding in this case; on the contrary, the record shows that the acknowledgments were taken of the sureties alone on the recognizances, and

there is no proof that they were taken jointly or together. The fees are claimed under the second clause of section 847, Revised Statutes, U. S.

Under the decision of the Jones case, 134 U. S., 483, the approval of the Court is conclusive in the absence of clear and unequivocal proof of mistake on the part of the Court.

It is submitted that the counsel for appellant has failed to show any mistake on the part of the Court in approving this claim, and that the judgment of the court below on this part of the claim should be affirmed.

CHARLES C. LANCASTER,
Counsel for Appellee.